IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 928 of 2009

Date of Decision: 19.7.2007

Joginder Singh … Petitioner

Versus

State of H.P. & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner	:	Mr. Ajay Mohan Goel, Advocate.
For the Respondent	:	Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for respondents 1 & 3. Mr. S.R.Sharma, Advocate, for Respondent No.2.

Deepak Gupta, J (Oral).

The petitioner by means of this writ petition has prayed that he be granted admission against the vacant seat of Master of Surgery in Ophthalmology which has fallen vacant from the All India Quota on 25.6.2007.

The respondent No.2 University issued a prospectus for entrance test for Post Graduate Degree (MD/MS) and Diploma Course in Indira Gandhi Medical College and Hospital, Shimla. The important dates mentioned in the prospectus are as follows:-

Important Dates.

1. Last date for receiving requests for prospectus by post	30.12.2006
2. Last date of receipt of Application Form at H.P. University Office.	08.01.2007
3. Issuance of Roll numbers/Admit Cards in person or to authorized representative in the office of the Deputy Registrar, Entrance Test at H.P. University, Administrative Block, Ground Floor, Room No.10, Summer Hill, Shimla-171005	24 & 27.01.2007
4. Date of holding the ENTRANCE EXAMINATION at H.P. University Campus, Summer Hill, Shimla-171005.	28.01.2007
5. Tentative Date of declaration of Result/ Merit along with displaying question papers and key answers.	01.02.2007
6. Date of Ist round of Counselling at New Examination Hall, Indira Gandhi Govt. Medical College, Shimla at 11.00 AM sharp w.e.f.	26.03.2007
7. Last date for joining the allotted course/college	17.04.2007.
8. Date of 2nd round of counseling (Counselling committee meeting), At Indira Gandhi Govt. Medical College, Shimla at 11.00 AM for admitting the present candidates from waiting list against vacancies arising due to any reason.	23.04.2007
9. Last date of joining for candidates admitted in 2nd round of counselling	30.04.2007
10.Commencement of academic session w.e.f.	02.05.2007
11.The seats remaining unfilled after second round of counselling will be advertised in the News papers by the Principal, Indira Gandhi Medical College, Shimla after exhausting the waiting list by : 29.05.2007 but not beyond 31.05.2007	29.05.2007 but not beyond 31.05.2007.
12.Last date up to which students can be admitted against left over reason. But change of course of already admitted students will not be allowed."	31.05.2007

The Apex Court in **Medical Council of India v. Madhu Singh and others,** (2002) 7 SCC 258, made it absolutely clear that no admission shall be granted after the scheduled date which date should essentially be the date for commencement of the course. In this regard, it would be pertinent to refer to the directions issued by the Apex Court :

> "23. There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.
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> In conclusion
>
> (i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(ii) even if seats are unfilled that cannot be a ground for making midsession admissions;

(iii) there must be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) Different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, Counselling and the like have to be completed within the specified time;

(vi) No variation of the schedule so far as admissions are concerned shall be allowed;

(vii) In case of any deviation by the institution concerned, action as prescribed shall be taken by MCI."

Thereafter the Apex Court in **Mridul Dhar (minor) and another v. Union of India and others** (2005) 2 SCC 65, following the judgment in Madhu Singh's case (supra) considered and approved the time schedule for completion of the admission process in Medical and Dental Colleges. According to this time schedule, approved by the apex Court, no admissions can be made after 31st May, in any post graduate courses.

After approving the time schedule in para 31, the apex Court in para 32 held as follows:-

> "Having regard to the professions courses, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges - new or old, students, Boards, Universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; should not be in excess of

> sanctioned intake capacity or in excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible."

In para 35, the apex Court gave various directions and direction No.12 reads as follows:-

> "12. The time schedule for grant of admission to postgraduate courses shall also be adhered to."

In **Amit Gupta and others v. Union of India and another** (2006) 2 SCC 449, the Apex Court gave certain directions for holding second counselling in postgraduate courses in All India Quota seats as an interim measure and further directed that the time schedule would not be changed.

The respondents have also placed on record a letter sent by the Director General (Health Services) to all the Principals of the medical colleges enclosing the time schedule for completion of admission process for postgraduate medical and dental courses for the academic session 2007-08, as approved by the Apex Court vide order dated 16.3.2007. As per this time schedule also, the last date for admission is 31st May.

A perusal of the orders of the Apex Court clearly shows that the last date cannot be varied by any authority for any reason whatsoever. In the present case, according to the petitioner, due to some litigation in Punjab, the process of selections for postgraduate courses in Punjab was delayed and, therefore, the person who had been granted admission in MS Ophthalmology under the All India Quota vacated the seat on 25.6.2007 and thereafter the petitioner

who was granted admission in MS Pharmacology, prayed that he may be given the seat of MS Ophthalmology which has fallen vacant.

Keeping in view the clear-cut guidelines of the Apex Court, referred to above, we are clearly of the view that we cannot allow the petitioner to change his course midstream for any reason whatsoever. We are bound by the law as laid down by the Apex Court which clearly lays down that even if seats are not filled, this will not be a ground to grant mid-session admission. In terms of the order of the Apex Court, no student can be permitted to change his course midstream after 31st May.

In view of the aforesaid discussion, we find no merit in this writ petition which is accordingly, dismissed. No costs.

Dasti copy.

(Deepak Gupta), J.

July 19, 2007. (V.K.Ahuja), J.

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